

ORIGINAL

FEDERAL COMMUNICATIONS COMMISSION

Petition for Reconsideration of
InVision Telecom, Inc.

CC Docket No. 96-128
Filed October 21, 1996

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Implementation of the)
Pay Telephone Reclassification and)
Compensation Provisions of the)
Telecommunications Act of 1996)

CC Docket No. 96-128

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PETITION FOR RECONSIDERATION
OF
INVISION TELECOM, INC.

InVision Telecom, Inc. ("InVision") respectfully requests that the Federal Communications Commission (the "Commission") reconsider its opinion that inmate payphone providers are not entitled to per-call compensation, as concluded in the Commission's September 20, 1996 Report and Order in this docket.¹ In support of its request, InVision states as follows:

¹Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, Report and Order, FCC 96-388 (rel. Sept. 20, 1996) (the "Report and Order").

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**1. FAILURE TO ADOPT PER-CALL COMPENSATION FOR INMATE-ONLY
TELEPHONE SERVICES VIOLATES THE COMMISSION'S MANDATE UNDER THE
TELECOMMUNICATIONS ACT OF 1996.**

Section 276 of the Telecommunications Act of 1996² directs the Commission to take all action necessary to "promote competition among payphone service providers and promote the widespread deployment of payphone services to the benefit of the general public[.]"³ Among its directives, the Commission is charged with establishing a per-call compensation mechanism to ensure "that all payphone service providers are fairly compensated for each and every completed intrastate and interstate call" from their payphones.⁴

In view of certain disparate and inappropriate intrastate rate caps that preclude fair compensation to inmate-only telephone service providers, specific examples of which are provided in this Petition, the Commission's failure to provide for a per-call compensation amount violates its mandate under the Telecom Act to

²Pub. L. No. 104-104, 110 Stat. 56 (1996) (codified at 47 U.S.C. § 276) (the "Telecom Act").

³47 U.S.C. § 276(b).

⁴47 U.S.C. § 276(b)(1)(A).

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ensure that payphone providers are fairly compensated for each and every call.

2. THE COMMISSION ERRONEOUSLY ASSUMES THAT INMATE-ONLY TELEPHONE SERVICE PROVIDERS ARE ROUTINELY PERMITTED TO CHARGE "HIGHER-THAN-AVERAGE OPERATOR SERVICE RATES AND SPECIAL SURCHARGES[.]"

The Commission concludes that:

[M]andating a per-call amount for inmate payphones, which do not allow local coin calls, could possibly lead to a double recovery of costs already included in higher-than-average operator service rates and special surcharges on end-user phone bills for calls made on these payphones, as argued by Gateway, an inmate payphone provider that opposes a greater per-call amount.⁵

InVision demonstrated in its Comments filed in this docket that collect telephone calls provided through specialized telecommunications systems available to inmates of confinement facilities are substantially more expensive to provide than collect telephone calls provided through payphones available to the general public. The greater expense results from: 1) the higher cost of providing service that meets the security and other needs of the confinement facilities, the called parties and the inmates; and,

⁵Report and Order, page 39, paragraph 74.

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2) the higher incidence of fraud and bad debt borne by independent inmate telephone service providers.⁶

However, the Commission's concern over "double recovery" is predicated on the misconception that rates charged for inmate-only telephone service are higher than rates charged for standard collect calling. InVision currently provides inmate-only telephone service in the following states in which interLATA rates are capped at AT&T's standard collect transmission rates and operator service charges (no additional charge permitted): Alabama, Georgia, Louisiana, Massachusetts, Minnesota, North Carolina, South Carolina, Tennessee and West Virginia. Likewise, the state of Florida imposes one cap on interLATA collect calls, irrespective of whether the call is placed from a payphone or a specialized inmate-only calling system. Local and intraLATA toll charges in the above states are typically capped at the incumbent local exchange company or Bell Operating Company's standard collect transmission rates and operator service charges (no additional charge permitted). Although InVision does not currently provide inmate-only telephone service in the state of Mississippi, it is aware that AT&T's "Prison Collect with Controls" tariff was originally filed there

⁶See Comments of InVision at 2-3.

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with an operator service charge of \$3.00, which was later reduced to \$1.94 to equal its standard collect operator service charge. Thus independent inmate service providers are capped at AT&T's standard collect rate for interLATA calls and at BellSouth's standard collect rates for local and intraLATA calls in Mississippi.

In addition to the above examples of inappropriate intrastate rate caps, inconsistent rate regulation of intrastate inmate-only telephone service is anticompetitive and confusing. For example, in Minnesota, independent inmate-only telephone service providers are required to mirror any reduction in transmission rates filed by AT&T, but are not permitted to mirror an increase unless a cost justification (not required of AT&T) is made. In Indiana, intraLATA calls provided by independent inmate-only telephone service providers are subject to a static rate cap while facilities-based carriers such as Ameritech, AT&T and MCI may set such rates based on market conditions and are not subject to any rate cap for inmate-only telephone services. Until very recently, Florida prohibited inmate-only telephone service providers from carrying any collect local or intraLATA toll collect calls from the confinement facilities they served. Only by applying for special

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waivers have specific independent inmate-only telephone system providers finally received this authority.

One of the most confusing and inconsistent intrastate rate regulations can be found in Tennessee, which caps operator service charges for local and intraLATA inmate-only collect calls at LEC rates, some of which are subject to a special, lower inmate calling rate, as follows:

In BellSouth and conforming LEC territories, the cap on operator charges for station-to-station collect local and intraLATA toll inmate calls is \$.50.

In United Telephone-Southeast Inc. ("United") territory, the cap on operator charges for station-to-station collect local calls is \$.50 and the cap for station-to-station collect intraLATA toll calls is \$1.50.

Interestingly, non-inmate collect calls are subject to the following operator services rate caps in Bell and conforming LEC territories: \$1.00 for station-to-station local and \$1.50 for station-to-station intraLATA toll calls. However, there is no difference between inmate and non-inmate collect call rate caps in United territory.

In addition, the cap in Tennessee for intraLATA toll transmission rates for confinement facilities within United's territory is \$.03 per minute, regardless of distance between originating and terminating telephone numbers or time of day of the

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call, to mirror United's rate. United is required to charge this low transmission rate for toll service as a result of overearnings which, of course, were not received by providers now capped at United's rates.

Although the \$.90 per-call compensation amount proposed by InVision would not change confusing and unpredictable underlying rate regulation for transmission and operator services charges, it would provide a consistent and fair compensation factor upon which providers could rely. Moreover, the ability to consistently apply a \$.90 per-call compensation amount to inmate-only telephone services would alleviate providers' reliance on higher interstate rates that can result from inappropriate rate caps at the state level.

3. THE COMMISSION ERRONEOUSLY CONCLUDES THAT THE \$.90 PER-CALL COMPENSATION AMOUNT WOULD BE ADDED TO "HIGHER-THAN-AVERAGE OPERATOR SERVICE RATES AND SPECIAL SURCHARGES."

Standard collect calls consist of two functions: transmission and operator service. Collect calls made by inmates of confinement facilities provide both of those functions, plus a third function consisting of highly specialized features unique to the inmate

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environment⁷ which, among other factors, results in a higher cost of providing service. While some states have recognized the higher cost of providing inmate-only telephone service by permitting higher tariffed charges for such service, e.g., AT&T's Prison Collect with Controls and MCI's Maximum Security Collect, some states have not. Rather, some states continue to cap inmate-only telephone service rates at the standard collect rates of facilities-based interexchange carriers and/or incumbent local exchange companies, as discussed in Section 2 above. For local and intraLATA toll calls, the rates which now act as a cap were typically developed by local exchange companies at a time when those companies were subject to rate of return regulation.

The Commission's conclusion that per-call compensation for inmate-only telephone services "could possibly lead to a double recovery of costs"⁸ is simply incorrect. The proposals before the Commission do not provide for double recovery of costs.

With respect to intrastate rates, the proposal to provide for a \$.90 per-call compensation amount for the specialized "third

⁷See Comments filed by InVision on Notice of Proposed Rulemaking, CC Docket No. 96-128 (June 28, 1996), at Exhibit A.

⁸Report and Order, page 39, paragraph 74.

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function" of inmate-only collect telephone calls leaves regulation of the underlying rates for transmission and operator service to state regulators. That is to say, each state would have the opportunity to adjust any "higher-than-average operator service rates" in light of the \$.90 per-call compensation amount.

With respect to interstate rates, the single-recovery aspect of this proposal was fully clarified in the Ex Parte Presentation filed by the Inmate Calling Services Provider Coalition, which states in part:

Under the Coalition's proposal, the Commission would adopt, in the payphone compensation proceeding, the \$.90 inmate system compensation charge that the Commission has already recognized is a fair rate to compensate inmate calling service providers for the services they render and which the Coalition has demonstrated is necessary to ensure fair compensation for the unique equipment and services required in the inmate environment. The Commission would then be free to establish, in the Billed Party Preference/rate ceiling proceeding, an interstate rate benchmark at the Big Three's existing non-inmate regular rates, plus 15%."⁹

To meet its mandate of ensuring that all payphone service providers are fairly compensated for each and every completed

⁹See Ex Parte Letter of Albert H. Kramer, counsel to the Inmate Calling Services Providers Coalition, to William F. Caton, Acting Secretary, FCC, CC Dockets 92-77 and 96-128, (September 9, 1996) (emphasis in original) (footnotes in original not copied here).

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intrastate and interstate call from their payphones, the Commission must conclude that a \$.90 per-call compensation amount is appropriate.

4. THE COMMISSION ERRONEOUSLY CONCLUDES THAT GATEWAY SUPPORTS ITS DENIAL OF FAIR COMPENSATION FOR INMATE-ONLY TELEPHONE SERVICES PROVIDERS.

The Commission believes that its position is supported by "Gateway, an inmate payphone provider that opposes a greater per-call amount."¹⁰ In an Ex Parte communication, Gateway states:

We suggest that application of the prevailing current inmate services surcharge (\$3.00) and current daytime MTS rates of the dominant OSP (AT&T) are adequate to fairly compensate inmate service providers for their costs of doing business...

Gateway goes on to state:

*The per-call surcharge for inmate collect calls exceeds the calling card and operator-dialed collect surcharges in every carrier tariff with which Gateway is familiar.*¹¹

Apparently Gateway has chosen to provide inmate-only telephone service exclusively in those jurisdictions which have recognized the higher cost to provide this service, while InVision has chosen

¹⁰Report and Order, page 39, paragraph 74.

¹¹See Ex Parte letter of Glenn B. Manishin, attorney for Gateway Technologies, Inc., to William F. Caton, Acting Secretary, FCC, CC Docket No. 92-77 (May 5, 1995) (emphasis added).

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to deploy inmate-only telephone systems on a more universal basis. Specific examples of carrier tariffs where the operator-dialed collect surcharge does not exceed or even equal the operator-dialed collect surcharge are provided in Section 2 of this Petition. Thus, Gateway's concern over "double recovery" was based on its ignorance of various intrastate rate caps and its erroneous perception that a per-call compensation amount would be added to an already higher-than-average operator service charge.

While InVision appreciates and supports efforts to curtail any unscrupulous business practices in the inmate-only telephone system industry, those efforts should be directed where there is a basis for concern. As discussed in Section 3 this Petition, under InVision's proposal for a per-call compensation amount, regulators would retain the ability to address underlying call components i.e., a higher-than-average operator service charge, to circumvent any such "double recovery." Gateway's comments cannot be construed to mean that it supports the application of standard collect telephone charges to inmate-only telephone services.

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5. THE COMMISSION ERRONEOUSLY CONCLUDES THAT LOCAL COIN CALL RATES ARE PERTINENT TO FAIR COMPENSATION FOR INMATE-ONLY TELEPHONE SERVICE PROVIDERS.

In its Report and Order, the Commission establishes per-call compensation for all access code calls, subscriber 800 and other toll-free number calls and debit card calls made from payphones available to the general public. The Commission concludes that "the appropriate per-call compensation amount ultimately is the amount the particular payphone charges for a local coin call."¹²

In its denial of per-call compensation for inmate-only telephone service providers, the Commission states:

Some PSPs argue that they should be entitled to a per-call compensation amount greater than that set for local coin calls. In particular, inmate payphone providers argue that their costs of originating calls are greater than that of other payphone providers, which should entitle them to a special compensation rate of \$.90 per call. We conclude at this juncture, however, that mandating a per-call amount for inmate payphones, which do not allow local coin calls, could possibly lead to a double recovery of costs...¹³

The fact that inmate-only payphones do not allow local coin calls is irrelevant to the issue of ensuring that inmate-only

¹²Report and Order, page 37, paragraph 70.

¹³Report and Order, page 39, paragraph 74.

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payphone providers are fairly compensated for each and every call. The rate charged to an end user for a local coin call bears no relationship to the higher costs incurred in providing specialized telecommunications systems to inmates of confinement facilities.

6. CONCLUSION.

InVision's revenue is derived from calls from the inmate-only telephone systems it owns, operates and maintains in over 500 confinement facilities nationwide. InVision's ability to continue to deploy inmate-only telephones, consistent with the goals of the Telecom Act, is dependent upon its ability to receive reasonable compensation for the services it provides.

The simple per-call compensation structure proposed by InVision is further consistent with the directives of the Telecom Act. Fair compensation awarded at this juncture would relieve the Commission, independent inmate-only telephone service providers, and state regulators of the administrative burden and expense of addressing, on a per-state basis, relief from intrastate rate caps that create a regulatory barrier to entry and competition.

InVision urges the Commission to re-examine the evidence presented in this docket, reconsider its conclusion, and extend the

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procompetitive approach reflected elsewhere in its Report and Order
to the issue of fair compensation for inmate-only telephone service
providers.

RESPECTFULLY SUBMITTED,

INVISION TELECOM, INC.

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